Name Carl D Simmons
Address E-96088
PO Box 5001
Calipatria, CA 92233
CDC or ID Number S163925/A3897308

049J82045259
$02.870
06/05/2008
Mailed From 92132
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FILED
SEP - 3 2008
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
San Diego and Imperial Counties
(Court)

PETITION FOR WRIT OF HABEAS CORPUS

CARL D. SIMMONS, CDCR # E-96088,
Petitioner
vs.
PEOPLE OF THE STATE OF CALIFORNIA,
Respondent

No. 96-8279
(To be supplied by the Clerk of the Court)

NUNC PRO TUNC
AUG 25 2008

08CV1127 W(POR)

## INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

American LegalNet, Inc.
www.FormsWorkflow.com

MC–275

This petition concerns: : Institution Appeal Log # SVSP 00-2961 ADA-IP.

☐ A conviction ☐ Parole

☐ A sentence ☐ Credits

☐ Jail or prison conditions ☐ Prison discipline

☒ Other *(specify)*: : 'continued on additional page.'

INMATE COPY

1. Your name: 'Referee:' CARL DWAYNE SIMMONS [dob 8/24/71] CDC #E-96088

2. Where are you incarcerated? Calipatria State Prison, Calipatria (CAL) 7018 Blair Rd, PO Box 5001, Calipatria 92233-5001

3. Why are you in custody? ☐ Criminal Conviction ☒ Civil Commitment

*Answer subdivisions a. through i. to the best of your ability.*

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

2 CRIM. B108576 [compensation for erroneous conviction].
SB No. 214013 [Warsaw]

b. Penal or other code sections: : 'Amount demanded exceeds $10,000' 'institutional litigant.'

c. Name and location of sentencing or committing court: : 'Limited Civil Case,':: 'special assignments' 'Electronically filed by the Superior Court of California, County of Sacramen-to'

d. Case number: : DAVID Y. STANLEY

e. Date convicted or committed: : (916) 452-9185

f. Date sentenced: : DAVID Y. STANLEY (67660)

g. Length of sentence: : CARL D. SIMMONS E-96088

h. When do you expect to be released? 'Special assignment' 'sides' 'relation back'.

i. Were you represented by counsel in the trial court? ☐ Yes. ☒ No. If yes, state the attorney's name and address:

: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signa-ture).'

4. What was the LAST plea you entered? *(check one)* 'Amendment to Abstract of Judg-ment.'

☐ Not guilty ☐ Guilty ☐ Nolo Contendere ☒ Other: : 'intended to encompass prisoner litigation,'

5. If you pleaded not guilty, what kind of trial did you have? 'Great Lakes Rule'.... 'conditional relevancy.'

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☒ Awaiting trial

MC-275

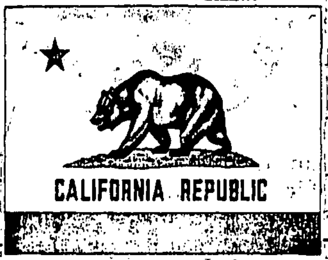
6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)*

PLEASE TAKE NOTICE that Defendant/Appellant hereby appeals from the judgment entered on December 6, 1996, in the above-entitled court, the Honorable Judge Nathan Agliano presiding.

a. Supporting facts:
Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*. *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

DATED: January 10, 1997



**PRIORITY MEDICAL DUCAT PASS (CDC 629)** DATE: **8/14/08**
***VALID*** DURING HOURS OF ASSIGNMENT
*FAILURE TO SHOW MAY RESULT IN CDC 115*
NUMBER: **E96088** NAME: **SIMMONS** CELL: **B5-246L**

PASS TO: **CENTRAL HEALTH**

PRIORITY

REASON: **AUDIOLOGY CLINIC**

TIME: **0900**

**ARRIVAL TIME:** **RECORDED BY:**

**DEPART TO:** **TIME:** **RECORDED BY:**

b. Supporting cases, rules, or other authority (optional):
*(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)*

KAREN R. ATKINS
Deputy Public Defender
Trial Counsel for Defendant/"next-friend," "assigned caseworker," "turncoat"
Appellant in Propria Persona

7. **Ground 2** or **Ground** _____ (*if applicable*):

The issues on appeal include, but are not limited to:
• The court erred in failing to have a full hearing on the defendant's challenge to the racial composition of the jury.

a. Supporting facts:

DATED: January 10, 1997

THE GREAT SEAL OF THE STATE OF CALIFORNIA
EUREKA

SVSP PRIORITY DUCAT

FAILURE TO REPORT MAY RESULT IN A CDC-115

INMATE

E96088 ~ SIMMONS ~ C8-223L

DATE: Thursday, March 08, 2007 TIME: 10:15

LOCATION: Facility C Clinic

REASON: MD Line

AUTHORIZED BY: PRIORITY

INMATE ASSIGNMENT OFFICE

ARRIVAL TIME: DEPARTURE TIME:

STAFF SIGNATURE: EXT:

b. Supporting cases, rules, or other authority:

: KAREN R. ATKINS
Deputy Public Defender
Trial Counsel for Defendant/"next-friend," "assigned caseworker" "turncoat"
Appellant in Propria Persona

7. Ground 2 or Ground ______ *(if applicable)*:

The issues on appeal include, but are not limited to:
The court erred in failing to have a full hearing
on the defendant's challenge to the racial
composition of the jury.

a. Supporting facts:

DATED: January 10, 1997

THE GREAT SEAL OF THE STATE OF CALIFORNIA
EUREKA

**SVSP PRIORITY DUCAT**
FAILURE TO REPORT MAY RESULT IN A CDC-115

*INMATE*
**E96088 ~ SIMMONS ~ C8-223L**

DATE: **Friday, April 14, 2006** TIME: **9:45**

LOCATION: **Facility C Clinic**

REASON: **Nurse Line**

AUTHORIZED BY: SP **PRIORITY**
INMATE ASSIGNMENT OFFICE

ARRIVAL TIME: ~~0900~~ DEPARTURE TIME: ~~1530~~

STAFF SIGNATURE: ~~Chief Medical Officer~~ EXT: ~~6042~~

b. Supporting cases, rules, or other authority:

KAREN R. ATKINS
Deputy Public Defender
Trial Counsel for Defendant/"next friend," "assigned caseworker" "turncoat"
Appellant in Propria Persona

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): ____________

b. Result ____________ c. Date of decision: ____________

d. Case number or citation of opinion, if known: ____________

e. Issues raised: (1) ____________

(2) ____________

(3) ____________

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

____________

9. Did you seek review in the California Supreme Court? ☐ Yes ☒ No. If yes, give the following information:

a. Result ____________ b. Date of decision: ____________

c. Case number or citation of opinion, if known: ____________

d. Issues raised: (1) ____________

(2) ____________

(3) ____________

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Carl Simmons vs. Salinas Valley State Prison
EEOC Charge No. 556-2007-00278

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

REQUEST FOR APPOINTMENT OF COUNSEL
Defendant/Appellant is indigent and was represented by the Office of the Public Defender in the trial court. The Office of the Public Defender declines to represent the Defendant/Appellant in this appeal. Defendant/Appellant requests that counsel be appointed to prosecute this appeal.
B207853
Santa Barbara County No. 214013

b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.
*Attach documents that show you have exhausted your administrative remedies.* ISBN 0-314-22877-2

MC-275

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: ____

(2) Nature of proceeding (for example, "habeas corpus petition"): ____

(3) Issues raised: (a) ____

(b) ____

(4) Result *(Attach order or explain why unavailable):* ____

(5) Date of decision: ____

b. (1) Name of court: ____

(2) Nature of proceeding: ____

(3) Issues raised: (a) ____

(b) ____

(4) Result *(Attach order or explain why unavailable):* ____

(5) Date of decision: ____

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

: Electronic Filing Help Desk, 301 Bicentennial Circle, Room 300, Sacramento, CA 95826, telephone: (916) 875-4187, e-mail: scefiles@saccourt.com

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

The evidence was insufficient.
The sentence is cruel and unusual.

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

: 'intended to encompass prisoner litigation,' 'equitable assignment,'

INMATE COPY

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

The prosecution was impermissibly permitted to enter victim's character into evidence.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 8/18/08

▶ [signature]
(SIGNATURE OF PETITIONER)